

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3736 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

A J RAULJI

Appearance:

MR HC RAVAL for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 15/10/1999

ORAL JUDGEMENT

Heard Mr. Raval, the learned advocate appearing for the petitioner Corporation. The respondent workman was served with notice of rule. However, he has not appeared in this matter either in person or through any advocate.

The facts of the present case, in short, are that the respondent was working with the petitioner corporation as a conductor for more than nine years and that he was dismissed from service on 1.2.1978 on an allegation that while he was on duty on Nadiad Route, his

bus was checked by the checking staff and one passenger was found without ticket though fare was collected from the said passenger. Another four passengers travelling from Nadiad to Petli were found without tickets though amount of fare was duly recovered from them. A report to that effect was made by the checking party. Thereafter, the respondent was served with chargesheet and after holding departmental inquiry against the respondent workman, the respondent was ordered to be dismissed from service which action was challenged by the respondent workman by raising industrial dispute which was, in turn, referred to the Labour Court, Nadiad being reference (LCN) No. 545/83. The labour Court, after considering the evidence on record, came to the conclusion that the punishment of dismissal imposed upon the workman is harsh and unjustified and the labour court was of the view that the back wages of the workman should be withheld by way of punishment, sufficient to the misconduct proved against him. In the award, the labour court has observed that the past record of the workman was not good and yet, the labour court has not thought it proper to impose some more punishment. The labour court, therefore, under the impugned award, directed the petitioner corporation to reinstate the respondent workman in service with continuity of service, of course, without back wages which has been challenged by the petitioner before this Court by filing this petition.

This court, while admitting the present petition by issuing rule thereon, has not granted any interim.

Mr. Raval, the learned advocate appearing for the petitioner corporation has contended that mere denial of back wages cannot be construed as punishment, sufficient looking to the misconduct committed by the respondent Corporation. According to him, the labour court has considered that the past record of the respondent workman is not so good and therefore, the labour court ought to have imposed some more and severe punishment. He has, therefore, submitted that some more punishment is required to be imposed upon the respondent workman.

I have considered the submissions of Mr. Raval, I have also perused the impugned judgment and award passed by the labour Court, Nadiad in which the labour court has observed that the misconduct is found to be proved on the basis of the evidence on record and the

past record was not good and, therefore, in the facts and circumstances of the present case, I am of the opinion that mere denial of full back wages cannot be said or considered to be punishment sufficient in view of the misconduct proved against the workman as also in view of his past record. Therefore, to that extent, the award passed by the labour court, Nadiad is required to be modified. I am of the opinion that in view of the misconduct found to be proved against the respondent workman, it would be just and proper to direct the petitioner corporation to stop three annual increments of the respondent workman with permanent effect, with effect from January, 1999. Therefore, the award passed by the labour court, Nadiad is required to be modified to that effect.

In the result, this petition is partly allowed. The impugned judgment and award passed by the labour Court, Nadiad in Reference (LCN) No. 745 of 1983 shall stand confirmed in so far as the reinstatement of the respondent workman with continuity of service without back wages is concerned. In addition thereto, the petitioner Corporation is directed to stop three annual increments of the respondent workman with future effect, with effect from 1st January, 1999. It is clarified that such stoppage of three annual increments of the respondent workman shall not result in reduction of the present pay packet of the respondent workman and the petitioner corporation will stop such three increments with future effect from future date. Rule is made absolute accordingly. Interim relief granted earlier shall stand vacated. There shall be no order as to costs.

The petition challenging the impugned judgment and award of the labour court was filed in the year 1989 and more than ten years have gone by now. Therefore, in the interest of justice to direct the petitioner corporation to implement this order modifying the impugned award of the labour court within some reasonable time. Therefore, the petitioner corporation is directed to implement the same within three months from the date of receipt of certified copy of this judgment.

15.10.1999. (H.K.Rathod,J.)

Vyas